

## NCDOT/ACEC/AGC Design-Build Committee

Thursday, February 2, 2006 – Meeting Minutes

The meeting was held in the Chief Engineer's Conference Room at 4809 Beryl Road, in Raleigh, North Carolina at 1:00 p.m. Attending were:

<u>NAME</u>	<u>REPRESENTING</u>
Victor Barbour	NCDOT
Steve DeWitt	NCDOT
Ron Hancock	NCDOT
Art McMillan	NCDOT
Ellis Powell	NCDOT
Rodger Rochelle	NCDOT
Berry Jenkins	Carolinas AGC
Jonathan Bivens	S. T. Wooten Corporation
Bill Copeland	Rea
Richard Kirkman	Dane Construction
Jeff Douglas	LPA Group
Gregory Heinz	Parsons Brinckerhoff
Tim Keener	URS
Mike Krannitz	Stewart Engineering
Tommy Peacock	RK&K
Tom Shearin	Earth Tech

The following items were discussed at the meeting and are listed in order of the agenda:

- 1. Introductions** – The contact list was provided with instructions to forward any changes to Tim Keener. Steve DeWitt noted that some members of the committee were no longer active and/or had moved out of state. Tim Keener responded that we would be updating the ACEC membership in April and that the new members would be attending the June meeting. Berry Jenkins noted that Fabrice Voisin wanted to remain a member and expected to become more active.
- 2. Schedule of Meetings** – A current meeting schedule was passed out to attendees. There will be a golf outing following the April 27 meeting. Berry will work on a location in west Raleigh for the golf outing with approximately four tee times between 1:00 and 1:30 p.m.
- 3. Update on Current Design-Build Projects Under Construction** – The following is an update on the projects
  - The Washington Bypass was approved by the Board of Transportation this morning.
  - B-3851 in Greensboro is 1-2 months behind.
  - I-85 widening is 12% ahead.
  - The road is open to traffic on I-3311D.
  - I-4401 is on time.
  - The Windsor Bypass project is under permit with DENR commenting on the good quality of the permit package.

- U-3101C in Cary remains behind schedule.
- Bingham Drive in Fayetteville is behind schedule do to significant utility issues.

**4. Future Design Build Projects** – The projects on the let list are pretty sound. Following is a list of future design-build projects:

- I-77 and Boch Boulevard projects are expected in May 2006.
- The Union County and Long Shoals Road projects are expected in June 2006.
- The Dell Union Crossroads project is in the middle of the planning process and is expected in February 2007.
- NCDOT is completing the roadway design and permitting for B-3637.
- B-3835 is shortlisted but has been delayed to April 2007.
- I-2810 pavement rehab is expected to be design-build.
- For I-3819 (I-40/I77) NCDOT is looking at the scope of the project.
- The LEDPA has not been chosen for the Bonner Bridge Project. \$200 million has been funded for the short bridge with no funding for dune or bridging down the existing corridor.

Other activities that could impact the volume of future design build projects is Garvey bonds and toll projects. NCDOT is trying to make decisions earlier on design-build projects.

**5. Confidential Questions** – This topic has been an issue with this committee for sometime and centers around the design-build team's desire to ask confidential questions without the answers to these questions being shared with other teams. Many of the questions would involve an approach to the project and asking NCDOT if they would be willing to accept this approach. Because of the money involved and the extremely competitive nature of design-build projects, the teams do not want to show their hands. The process of having one meeting to discuss confidential questions does not allow follow up if the answers are unclear or if additional questions arise. Berry Jenkins made a recommendation that both parties (NCDOT and the design-build team) sign a confidentiality agreement.

Additional meetings would be beneficial to all parties and would allow discussion of approaches that may be restricted unintentionally by the RFP. Tim Keener presented an example on the I-26 project where the RFP called for a minimum 2-foot offset to barrier for traffic control, which caused additional phasing and increased the cost of the project and the time to deliver, when NCDOT was allowing less than this offset on many on-going interstate projects. The contractor may have chosen to take the risk and bid the project in this manner. Jonathan Bivens commented, in his opinion, that the contractor on the US1/64 design-build project is currently building the project using traffic control measures such as ramp closures that were not allowed by the RFP and would have resulted in a non-responsive proposal had these measures been included in the proposal. In summary, the contractors want to keep and protect their ideas and approaches, and wants NCDOT to make sure the projects are being built per the requirements of the RFP, while NCDOT desires open questions and innovative ideas. NCDOT, AGC, and ACEC/NC agreed to revisit this issue.

There is also concern that NCDOT staff and/or NCDOT retired staff are sharing project information with design build teams even though it is unintentional. NCDOT stated that staff have been instructed not to share information and that all questions need to come through Rodger Rochelle and he would address the questions.

- 6. Exposing Scores/Cost Proposals** – NCDOT is concerned about exposing the technical scores when the design-build bids are opened due to the potential of the bids being out of bounds and triggering the Best and Final Offer (BAFO) process. Teams can then look at other teams' scores and could use this information to their advantage. Berry Jenkins noted that there is a lot of feeling that the BAFO process is unfair because NCDOT cannot develop as accurate a bid estimate as the design-build team's estimate due to the difference in the level of effort that goes into the estimates. Therefore, it is a problem to use NCDOT's engineers estimate to throw out bids and enter into the BAFO. Berry noted that you need to change scope in order to change price. He also read a paragraph from the NC General Statute 143-129 that is a statute used by the State Construction Office and included below:

*“In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.”*

This statute would have to be modified for NCDOT use.

Victor Barbour recommended giving the team's their technical scores in sealed envelopes at the bid opening and not revealing the scores to the other teams if the bids are more than 10% out. This score would then be applied to the BAFO. All agreed that this seemed like a better and fair approach. Berry Jenkins reiterated that the basic problem is the engineer's estimate and stated “Granite felt punished by NCDOT's inability to accurately estimate design-build projects,” and “the percent out is important.”

NCDOT is working on an approach and RFP language to address this issue and hope to have it in place and approved by FHWA and the AGs office prior to the next final technical proposal submittal.

- 7. Enhancement Opportunities (Innovation, Economy, Life Cycle)** – NCDOT is looking for ways for the design-build teams to help them make decisions on projects to add flexibility and economy to the RFPs and projects. They feel that the I-77 project in Division 11 could have benefited from this approach. NCDOT wants flexibility and economy through reduced constraints or whatever other means they can accomplish this. The bottom line is they want to create ways for the design-build teams to help NCDOT make decisions (i.e. traffic control). Discussions centered on the idea of allowing alternate scopes with alternate bids, but this would confuse the technical score/quality adjustment procedure. NCDOT agreed to bring back some examples for discussion.

**8. NCDOT Issues and/or Concerns** – NCDOT is having difficulties with the estimating process. They are using the preliminary plans from the planning document for estimating purposes. NCDOT does not have a formal threshold for denying bids but Victor feels that a 15% threshold is good. NCDOT is basing their bid on the preliminary plans from the planning document. Would the design-build team's be willing to share their quantities with NCDOT's estimators confidentially? Bill Copeland stated that major quantities make up 80% of the bid and maybe these should be all that are provided. NCDOT wants better engineers estimates, but using the design-build teams' estimated quantities may be a conflict due to the influence on NCDOT's estimate towards the design-build teams bids. NCDOT does not consider the added cost of design-build such as assumption of risk by the design-build teams or the highly accelerated schedules. NCDOT's estimate gives little consideration to traffic control or construction phasing. NCDOT has used the BAFO process three times – I-26, Bingham Drive, and Washington Bypass. The bottom line is that NCDOT needs better estimates. Rodger Rochelle noted that asking questions early and often could possibly prevent BAFOs in the future. NCDOT requested that AGC and ACEC take this issue back to their members and develop means to deal with this issue.

**9. AGC Issues/Concerns** – The following issues were raised:

- a. AGC noted that there is growing disenchantment with the design-build process. On Washington Bypass, the teams spent roughly \$650,000 each with the contractors eating a lot of this cost. It is getting too expensive to propose on projects, especially because of the expense and more teams lose than win. NCDOT is aware that this is an issue. NCDOT asked if contractors and firms are making conscious decisions not to chase design-build projects and AGC and ACEC answered affirmative. Geography also affect the number of bidders.

**10. ACEC/NC Issues/and/or Concerns** - The following items were discussed:

- a. An invitation was extended to NCDOT to attend the next DBIG meeting on March 9, 2006 to provide an update on the Alternate Delivery System and to field any questions for attendees. NCDOT accepted the invitation to attend.
- b. The Conflict of Interest Survey was filled out by the attendees of the meeting with the exception of ACEC/NC members who had completed the survey. The results of this survey will be given at the next meeting.
- c. ACEC/NC asked that as much notice as possible be given of potential design-build projects to allow us to time to make go/no go decisions and teaming arrangements early. This is critical to firms who are determining how much to spend chasing design-build as well as making business decisions.

Following the open discussion, the meeting was adjourned.